IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.567 OF 1993.

Smt.Sunita Balasaheb Pawar
& ors. : Appellants.

versus

Shri Ramsing Fattesing Naik
& ors. : Respondents.

Mr.T.S.Ingale for the appellants.
Mr.V.D.Patil for Respondent Nos. 4 and 6.

CORAM : D.G.DESHPANDE,J.

DATED : 28th January 2005.

ORAL ORDER

1. Heard advocates for the appellants and respondent Nos. 4 and 6. The appellants are the original claimants viz. wife, mother, father and brother of the deceased Balasaheb Maruti Pawar who was travelling in a Truck bearing No. MWE-1035. While this truck was going by Pune Bangalore Highway, it hit two tankers or trucks

in succession viz. CNT 8828 and MHL 3129. The truck was badly damaged and deceased Balasaheb - the passenger died on the spot. The tribunal, though came to the conclusion that had the liability been proved, the claimants would have been entitled to Rs.60,000/- towards compensation and the claim petition came to be dismissed on the ground that the claimants failed to prove the manner in which the accident took place or failed to prove the negligence of the driver of truck No. MWI 1035. The tribunal refused to look into the panchanama and/or refused to draw any inference on the basis of panchanama. Hence this appeal.

2. Counsel for the appellants contended that even though the claimants had not examined any witness to depose about the manner in which the accident took place, the admitted facts on record and the panchanama which is at Exhibit 58 clearly show that the truck MWE 1035 by which the deceased was travelling hit or dashed against two stationary trucks in succession. Those trucks being CNT 8828 and MHL 3129. The panchanama clearly shows that the truck MWE 1035 was totally and completely ruined. But there was no damage

worth noting to the other two trucks which were standing on the road.

3. If a moving vehicle dashes against a stationary vehicle, then, generally, it can be said that the driver of moving vehicle is negligent. This will, of course, depend upon the facts of each case. In the instant case the particulars of the accident given in the claim petition that at the relevant time Opponent No.1 was driving the vehicle, the truck bearing No.MHL 3129 was standing on the tar road without any indicators. At that time, the truck, by which the deceased was travelling, dashed twice to the two trucks in succession. This accident took place at about midnight at 1 'O' clock on highway. Obviously this was not the time of anybody to be present at the spot to be a witness. And even though the owner and the drivers of all the three trucks were joined by the claimants in the claim petition as opponents, none of the opponents cared to examine himself in order to throw any light or to assist the court or to prove their non-involvement in the accident.

4. Therefore, the panchanama, the facts alleged in the claim petition and the scanty evidence on this point of the claimant are sufficient to conclude that Balasaheb Pawar died as a result of negligence on the part of all the three vehicles owner.

5. The truck by which the deceased was travelling was insured with Oriental Insurance Company - the Opponent No.2 in this appeal. But since the claim was not considered on merits, there was no question of fixing the liability upon the Insurance Company. The counsel for the appellants relied upon the judgment of the Supreme Court reported in **2004 ACJ 1 [National Insurance Co. Ltd. v. Swaran Singh and ors.]** wherein the Supreme Court, while discussing the role of Insurance Company, held that the insurance company is liable to satisfy the award firstly and then to recover the awarded amount from the owner or driver of the vehicle and, regarding breach of policy, also the burden will lie upon the insurance company to prove the breach.

6. So far as quantum of compensation is

concerned, the tribunal came to the conclusion that the claimants would have been entitled to Rs.60,000/- including no fault liability. The court has considered the income of the deceased and applied multiplier of 20. The claimants on the other hand claimed Rs.One lakh. In my opinion in stead of Rs.60,000/- arrived at by the tribunal, the claimants would be entitled to recover Rs.80,000/- which would include Rs.20,000/- towards loss of life of the dependents and the shock on account of loss. Hence the order :-

:ORDER:

The appeal is partly allowed. The impugned order dismissing the claim petition is set aside.

The respondents will pay Rs.80,000/- [Rupees Eighty Thousand only] to the claimants along with interest at the rate of 9% from the date of their claim petition till the payment and costs of this appeal.

[D.G.DESHPANDE]

28/01/2005 JUDGE.